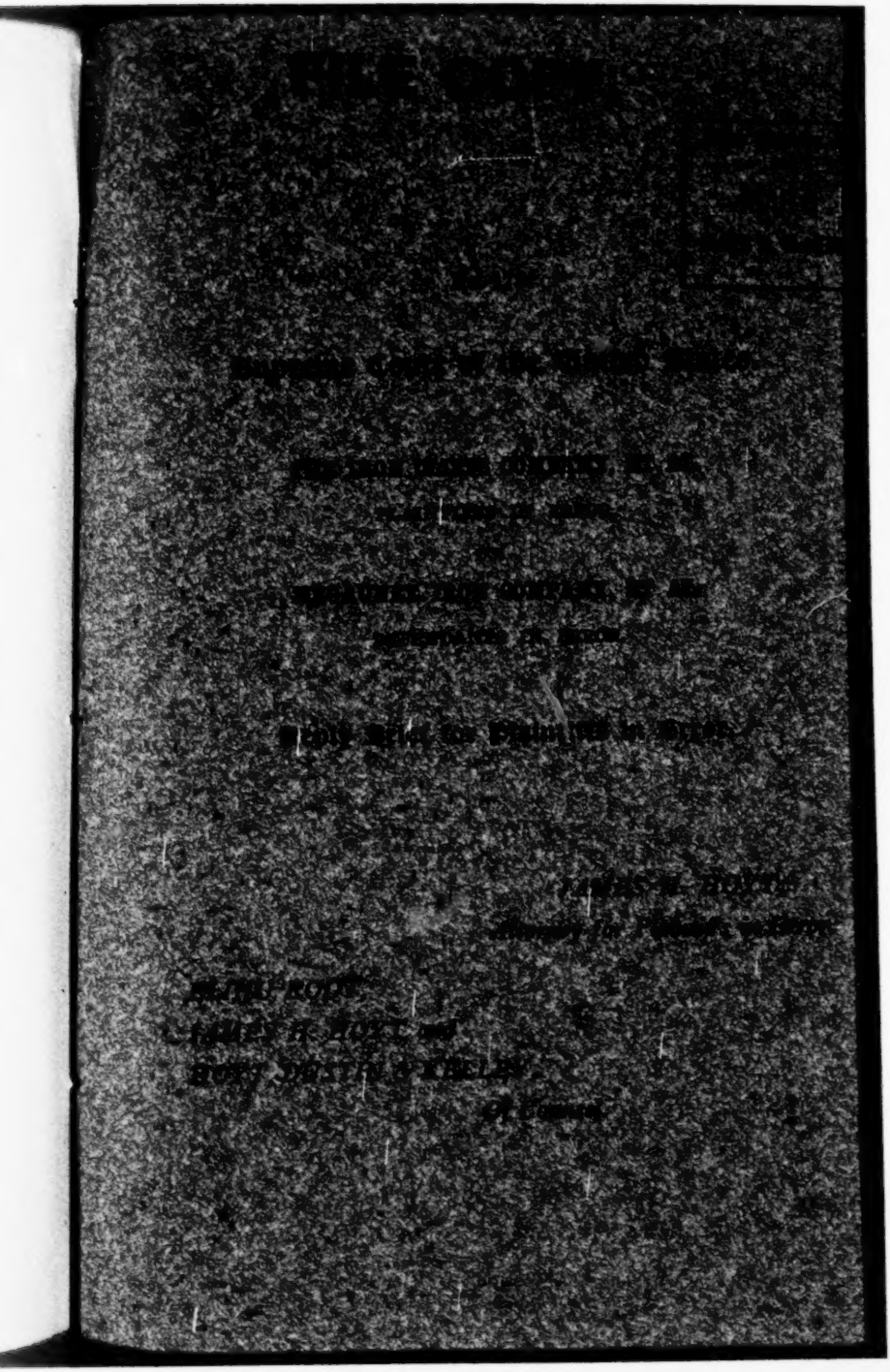

No. 173.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, ET AL.

PLAINTIFFS IN ERROR,

vs.

NEGAUNEE IRON COMPANY, ET AL.

DEFENDANTS IN ERROR.

Reply Brief for Plaintiffs in Error.

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Of Counsel.

Supreme Court of the United States.

THE IRON CLIFFS COMPANY, THE CLEVELAND-CLIFFS IRON COMPANY, WILLIAM G. MATHER AND MURRAY M. DUNCAN,

PLAINTIFFS IN ERROR,

vs.

NEGAUNEE IRON COMPANY, EDWARD N. BREITUNG AND MARY KAUFMAN,

DEFENDANTS IN ERROR.

Reply Brief for Plaintiffs in Error.

Various inaccuracies of statement, in defendants' brief, both in the application of principles and as to the relation of the facts of this case, make necessary this reply.

So far as defendants in error argue the merits of the federal question which we present, namely; that the property of the Pioneer Iron Company and its stockholders was taken *without due process of law*, they proceed upon theory rather than the plain facts as shown by the record. One of the general ideas running through their brief is found on page 14, where they say:—

> "The averments are of the same character as would be the case were plaintiffs in error charged by the bill with making use of the name of a fictitious person or corporation, which they fraudulently set up as a cover for their acts. In either case the claim is false and fraudulent and may be shown to be false and fraudulent by showing that in the one case the corporation under whom they claim to act is dead, and in the other case the corporation or person is fictitious."

In other words, it is here and throughout the brief suggested that the case may be considered in principle as though defendants below had asserted mere fictitious claims and rights under a mere fictitious name. We deny both the premises and the conclusion of this argument. The complainants below themselves set out the execution and the granting of this valid leasehold to a valid and existing corporation. The leasehold is for 99 years. Its term is not yet half expired. The rights and privileges granted are of immense value.

The lease itself in terms "*descends, — to the corporate successors of the Pioneer Iron Company.*"

Here are actual, substantial property rights, really and actually conveyed to the Pioneer Iron Company and to its successors, but to no other person.

By legal enactment of the State of Michigan and by corporate act of the stockholders the Pioneer Iron Company was extended with all the property and rights previously granted to and owned by that company.

To disregard these vast property rights, — to treat this transaction and this corporation as a fiction, — to proceed by

judicial process, and by judgment to terminate those rights, without the presence of the persons really interested therein, — we claim amounts to the taking of property *without due process of law.* THE ONE GREAT FACT WHICH DEFENDANTS HERE AND BELOW SEEK TO IGNORE, IS THAT THERE WAS A 99 YEAR LEASE ACTUALLY GRANTED, AND THAT IT HAD AN OWNER WHICH WAS NOT BEFORE THE COURT.

Defendants in error further assert that the suit was prosecuted not against the Pioneer Iron Company, or to obtain a forfeiture of said lease as against it, but to prevent the defendants below individually from pretending that the Pioneer Iron Company exists, and from fraudulently mining iron ore for their own benefit under said lease in a manner not authorized or contemplated by the lease itself, — by reason of which they say the Pioneer Iron Company was not a necessary party and that its property remains untouched and unaffected, and that, consequently, the stockholders of that company are not in any manner injured.

An examination of the correctness of these claims illustrates with clearness and with force the merits of our entire position.

The manifest purpose of this suit was by judicial decree to terminate the 99 year lease and the rights appearing to exist thereunder; — not simply to stop some unauthorized act by an unauthorized person.

The bill in explicit terms sets up in full and at length the granting of the lease to the Pioneer Iron Company and the many reasons why the rights thereunder had theretofore terminated and were no longer available as property rights;

that by reason of this termination of the 99 year lease defendants below had no right, in the name or on behalf of the Pioneer Iron Company, to mine for ore acting under said lease.

The whole elaborate case for complainants below, as presented to the Court upon the trial, consisted of an attack—not on the defendants personally, *but on the right of the Pioneer Iron Company and upon the existence of its 99 year leasehold.*

The Decree.

The decree of the Circuit Court of Marquette County, which was affirmed by the Supreme Court and now stands as the judgment in this case, begins on Record, page 556. Its opening sentence is as follows:

> "This cause having come on to be heard upon the bill of complaint, the answer thereto and the replication of complainants to such answer, the proofs in said cause taken in open court and having been argued by counsel for the respective parties, and the Court having duly considered the same and being advised in the premises, doth find, order, adjudge and decree as follows: * * *"

Said decree thereupon proceeds with adjudications of the foundation rights of the Pioneer Iron Company set up in the bill of complaint, but it deals with no other rights; and, except the act of mining, it deals with no other facts than the question of the rights of the Pioneer Iron Company under the 99 year lease. These it finds and adjudges. Except the one fact as to the tempo-

rary trespass complained of, the entire determination of facts, on which in terms the injunction is based, consists in *an adjudication of the rights of the Pioneer Iron Company under the 99 year lease, and a finding of the several reasons why that lease no longer exists.* It is true the Court find that William G. Mather and Murray M. Duncan without legal authority, etc., instigated and directed the trespasses complained of and employed the men who were digging, but this conclusion resulted from the finding that the 99 year lease was terminated, — by reason of which they had no right so to mine.

"*In consideration of the foregoing findings and determinations,*" the perpetual injunction was granted, — as a means of carrying out the decree and to prevent future operations under the 99 year lease which the Court decided had been lost, abandoned and terminated by the Pioneer Iron Company.

The perpetual injunction runs against all the defendants below and against their counselors, attorneys, solicitors and agents, and then follows the language "whether acting in their individual or representative capacity."

The words "*representative capacity*" were not used to cover defendants below as representing each other, or in a general sense, or as individuals might represent the two corporate defendants, for it was not found that either the Cleveland-Cliffs Iron Company or the Iron Cliffs Company had done or threatened any wrongful act or trespass; — and in any event each of these parties was personally enjoined.

These terms were used to enjoin the defendants from acting for and setting up rights of the person whom complainants alleged they were wrongfully claiming to *represent,*

— and whom the defendants had claimed and pleaded that they in fact represented, namely, the Pioneer Iron Company. The very marrow and gist of complainants' case had been a denial of the right of defendants below to represent the Pioneer Iron Company.

When the injunction is read in the light of "*the foregoing findings and determinations of the Court concerning the particular matters in complainants' bill of complaint*," — on which said injunction is based, — and in the light of the claims of defendants below that they acted only as the officers and agents of the Pioneer Iron Company in asserting its right to mine under the 99 year lease, — there can be no difficulty in determining that the words "representative capacity" meant and were intended to mean *as representatives of the Pioneer Iron Company*.

The scope and purpose of this decree is plain and the *use* to be made of it is obvious. There can be no doubt that it cuts off the 99 year lease and perpetually enjoins the assertion of all rights under it by the officers of the Pioneer Iron Company.

The form in which the orders and judgments were made is of little consequence in the determination of the fact as to whether or not *due process of law* was had in this case. It is plainly evident that the Pioneer Iron Company, the grantee and the only person who was ever interested as the owner of the leasehold, was not before the court. There can be no doubt that, but for the claimed acts and defaults on which forfeiture was predicated in the bill of complaint, the 99 year lease had not expired. It is therefore evident on the face of things that should the Court find the effect of this judgment to be, as it is claimed by the plaintiffs in error, a

determination of the rights granted under this lease, — the Pioneer Iron Company has been deprived of property without being heard, and this regardless of the course pursued in reaching the end attained.

In our main brief we have broadly discussed these propositions, and have shown that neither the Pioneer Iron Company nor its stockholders have been or could have been heard in this case in defence of their property.

Due Process of Law.

Defendants in their last brief, (page 37), cite numerous authorities and decisions of this Court sustaining the general principle that " due process of law " is had when the party to be affected by a litigation has been brought into Court and afforded an adequate opportunity to defend his rights or property.

We do not question or deny, but, on the contrary, we assert the correctness of this principle.

The stockholders of the Pioneer Iron Company were permitted no defence of their corporate property which was taken. While the Iron Cliffs Company and William G. Mather were personally made parties to the suit, yet in determining whether they were afforded an opportunity to defend their corporate property rights, — *this Court should be governed by real and not pretended things.* As said in *Simon v. Craft,* 182 U. S., 427, see 436:

> " In determining whether such rights were denied, we are governed by the substance of things and not by mere form."

Even though personally made parties, the plaintiffs in error had no power to represent or defend the Pioneer Iron Company or through it their property as its stockholders.

The question as to whether the owner of this vast property should or should not be made a party to this suit, with the right to be heard before its property rights were cut off, is not dependent upon the rules or discretion of the state court, — or upon the opinions of a Chancellor, — "it rests upon a much broader ground, which must equally apply to all courts of equity, whatever be their structure as to jurisdiction; it rests upon the ground that no court can adjudicate directly upon a person's rights without the party being either actually or constructively before the court."

Mallow v. Hinde, 12 Wheaton, 193, see 198;
Shields v. Barrow, 17 Howard, 130, see 141;
Taylor v. Southern Pacific Co., 122 Fed. Rep., 147, see 152.

The case of *Elmendorfer vs. Taylor,* 10 Wheaton 152 see 166-7, cited by defendants in error in their brief, page 47, is illustrative of the entire principle contended for, namely;— that the bringing in of certain classes of parties defendant — lies within the discretion of the Court. That case, *Elmendorfer vs. Taylor, supra.,* is explained and thoroughly distinguished in the subsequent case of *Mallow vs. Hinde,* 12 Wheaton 193, see 198, and also in the later cases cited in our main brief.

None of the other authorities cited by defendants upon this proposition are in point in a case like this.

Jurisdiction — Federal Question.

It is further claimed by defendants in error that no federal question exists for the consideration of this Court for the following reasons:

FIRST. They assert that it does not appear that the Iron Cliffs Company itself set up and claimed the federal question here asserted and relied on, and that the answer for it by William G. Mather is not sufficient (defendants' brief, pages 17, 29 and 30).

SECOND. That William G. Mather was the only person who set up and claimed the federal question here being presented and the record does not show said Mather to be a stockholder of the Pioneer Iron Company; but, on the contrary, that the Michigan Courts found against his ownership of stock in said company, (defendants' brief, page 17-35).

THIRD. That before the Court can find the existence of a federal question, it must first be found that the reorganization of the Pioneer Iron Company was in fact regular and valid so that it would own the 99 year lease.

We have heretofore in our main brief largely considered these questions; but directly answering defendants' present claims, we have to say that the federal question now and here claimed was undoubtedly asserted in behalf of both the Iron Cliffs Company and William G. Mather in the state courts.

(a) During the trial in the Circuit Court this question directly arose and these rights were claimed by counsel in behalf of defendants who were stockholders in the Pioneer Iron Company.

(b) The amended answer filed by William G. Mather avers the holding by him of the stock of the Pioneer Iron Company in two capacities, (1) individually, (2) as trustee, and this constitutional claim was set up in behalf of the real owners of this entire stock.

(c) The proof showed without dispute the extent of both these holdings and that Mr. Mather held 10 shares individually and the balance *as trustee for the Iron Cliffs Company.* No attempt was made to dispute this ownership and holding of stock, but, on the contrary, all parties assumed it to be correct and complainants by their counsel asserted that by reason of this ownership by William G. Mather and the Iron Cliffs Company the doctrine of representation applied, and hence that the Pioneer Iron Company need not be made a party to the suit.

The trial court in its opinion, (Record page 555), said:

> "They (complainants' counsel) also contend that the Pioneer Iron Company would be bound by the decree without making it a party, for the reason that the defendant, Wm. G. Mather, was the president of the company, and the holder of a large majority of its stock, as trustee for the defendant, the Iron Cliffs Company, at the time of filing the bill, and that, therefore, the company would be bound, although not a formal party to the suit."

The court then proceeds:

> "This doctrine, tersely stated, is to the effect that where it appears that a particular party, though not before the court in person, is so far *represented by others who are* before the court that his interests receive actual and efficient protection, his actual

joinder may be dispensed with and the decree may be allowed to be binding upon him. 15 *Ency. Pl. & Pr.*, 527, 628, and cases cited."

No doubt can lodge in the mind of any fair person but that these rights were asserted and were understood to be asserted for *both these stockholders* in the trial court. They were also asserted and claimed in the Supreme Court.

The same amendment to the answer setting up these constitutional rights in behalf of these two stockholders was filed in and considered by the Supreme Court. That court in its opinion on page 569 discusses the claims so made on behalf *of stockholders.* It will be observed that there are no distinctions drawn and no direct holdings on the ownership of stock. The court say "the defendants own and have owned for many years all its capital stock, etc."

The only defendants who averred ownership in the pleading which was being considered were William G. Mather and the Iron Cliffs Company. When it is remembered that the Supreme Court did not refuse to consider this claimed right, but, on the contrary, passed upon this constitutional question, it must be perfectly evident that the court found that the same was raised by stockholders; and even though it had distinguished between the holdings of the Iron Cliffs Company and William G. Mather, *yet the question is raised for both of them*, and the court was advised of and considered the claims then and now asserted, with full knowledge of the position which was taken by these stockholders. It will be observed that the Supreme Court not only considered the claims of the stockholders on this subject, *but also considered the claims of complainants' counsel.* — namely, that Wm. G. Mather and the Iron Cliffs Company be-

ing stockholders in the Pioneer Iron Company, the doctrine of representation applied, and that the judgment would be binding against that company although it was not a party to the suit. We know this from the authorities cited by the Court in its opinion (Record, page 569.) They are the following:

15 *Ency. Pl. & Pr.* 627;
Hale v. Hale, 146 Ill., 227; 33 N. E. 858, 20 L. R. A., 247.

This Court has plainly held, in *Land & Cattle Co. v. Frank,* 148 U. S., 603, see 610, that the doctrine of representation cannot apply to a case of this kind, where an attack is made upon the rights of a corporation, but that where a corporation is the person to be affected, it is not sufficient that its stockholders are made parties to the suit. Yet the holding and opinion of the Supreme Court of Michigan upon this question is, nevertheless, important in that it removes all doubt as to the fact that the court found the question to have been raised by stockholders.

Inasmuch, therefore, as William G. Mather and the Iron Cliffs Company were the parties who set up and claimed by pleading and otherwise this question, it is evident that the Court assumed and found their claimed ownership of stock as asserted by them.

———o———

The claim is made by defendants in error on page 17 of their general brief, that in order to be heard in this Court upon a federal question, the party claiming it must show that he raised that question in the state court, — and that it will not aid him to show that some one else has raised it in the

state court, while he failed to raise it. This is correct as the statement of a general principle, — where parties are not united in interest and have proceeded separately.

But how does that principle apply to this case? All the stock of both these stockholders was held in the name of William G. Mather. Both of them intended to assert this constitutional question. It was set up and claimed *for them,* in an answer filed by Mr. Mather, who held the stock. It was also asserted and claimed by both brief and argument of counsel. The parties on both sides were fully advised of these facts, and the state courts *acted on these claimed constitutional rights,* with a knowledge of the entire situation. What further or more explicit claim should have been made? Should technicality in form of statement be invoked to defeat this constitutional right?

This Court has held in *Dewey v. Des Moines,* 173 U. S., opinion 199, that no particular form of words is necessary to be used in order that the federal question may be said to be involved.

In the case of *Roby v. Colehour,* 146 U. S., 153, see 159-160, this Court refused so technically to construe pleadings as to defeat the constitutional right, where the intention to assert the claim was evident.

In *Land and Water Co. v. San Jose Ranch Co.,* 189 U. S., 177, see 180, it was held that the federal question is sufficiently set up and claimed, if such federal question was fully considered in the opinion of the state court, and ruled upon against the plaintiffs in error.

Thus repeatedly has this Court refused to apply tech-

nical considerations to the *form* or *manner* of claiming a constitutional right, where the intention to assert that right is apparent from the entire record.

Reorganization of Pioneer Iron Company.

Answering the third of defendants' claims above referred to, namely; that before this Court can find the existence of a federal question it must first determine that the Pioneer Iron Company was regularly reorganized, — we have simply to call attention to the few previously considered facts. The 99 year lease itself was so drawn as to grant to the Pioneer Iron Company the rights and privileges there conveyed "*for the full end and term of 99 years from and after the date hereof;* and it also provided that the rights and easements above mentioned "*shall descend to the corporate successors of the party of the second part.*" The lease was not to terminate at the end of 30 years, but was to continue and to *descend.* The continued existence of the rights granted was not conditioned upon the happening of some event or the continuation of any condition. They were continuing, vested, property rights. The 99 year lease then was available to and would continue in the Pioneer Iron Company when reorganized and extended.

In our main brief we have shown that by the law of Michigan provision was made for extending by reorganization the corporate existence of the Pioneer Iron Company. The record shows that the stockholders acting under that law reorganized and extended the company.

Even assuming that because of any informality or

technical defect the acts of the stockholders were in some respects irregular, yet the State of Michigan has never questioned or in any way objected to the exercise of the corporate powers of this company by reason thereof. These defendants can not be heard to raise such a question.

Potter v. Street Ry. Co., 83 Mich., 285.

The general law of Michigan makes provision for just this sort of irregularity. Section 6996 of the laws of Michigan pertaining to mining and iron manufacturing companies reads as follows:

> "Neither the organization of any corporation formed under the general mining and manufacturing laws of this state, or which may hereafter be organized under this act, nor any corporate act, shall be deemed invalid by reason of any omission in its articles of association, irregularity in filing them, or insufficiency of notice of meeting, unless such omission, irregularity, or insufficient notice shall have been fraudulently intended; and the stockholders may at any meeting regularly called, by a vote of a majority of the stock, supply the omission in its articles, direct them to be properly filed, or ratify and confirm the action taken at a meeting insufficiently noticed, and upon this being done all the acts and proceedings of said corporation shall have the same force and effect as though said omission, irregularity, or insufficiency had not existed."

The statutes of Michigan, Section 6997, also provide:

> "The articles of association so filed, the record thereof, or copies of such articles certified by the secretary of state or county clerk, *shall be prima facie*

evidence in all courts and proceedings of the organization of such corporation."

It thus appears from the statutes of Michigan that no mere irregularity or omission can be complained of in such a collateral proceeding as this, and further that the production of the certified copy of the records of the Secretary of State is made the prima facie evidence of the corporate organization and existence of the company.

No attempt was made to dispute the facts shown by the certified copies of the records of the Secretary of State offered in evidence in this case, nor that said Pioneer Iron Company was reorganized. On the contrary, the courts of Michigan in terms recognized the fact that the reorganization steps had been taken as shown, and declined to disturb the corporate existence.

There being no finding and determination of the courts of Michigan against the validity of the corporate reorganization of the Pioneer Iron Company, this Court may, and in the interest of justice should, examine the entire record for the purpose not only of finding whether the Iron Cliffs Company and William G. Mather were stockholders of the Pioneer Iron Company, but also to determine whether or not it should have been a party.

Blake v. McClung, 172 U. S. 239, see 246;
Sully v. National Bank, 178 U. S. 290, see 298.

In the latter case one Carhart set up certain constitutional rights growing out of the fact of discrimination between citizens of the State of Tennessee and those of the State of New York, Carhart claiming to be a citizen of the State of New York. It was claimed by parties opposing Carhart's position that:

"It does not appear that he is a citizen of another State than Tennessee, and hence cannot avail himself of the fact of such citizenship in order to claim that his rights as such citizen have been infringed within the meaning of section 2 of article IV of the Constitution, declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several states. We think the objection untenable.

"In his original bill to foreclose the mortgage security the eighty-five thousand dollars of bonds held by him, he described himself as a resident of the State of New York, and in the petition of Mrs. Myton and Mr. Carhart, filed October 11, 1895, in the two cases against the land company, Mrs. Myton is described as a resident of the State of New York, and A. B. Carhart is described as a resident of the City of Brooklyn. No question seems to have been made throughout the litigation as to the citizenship of those parties. The question does not seem to have arisen in any stage of the case up to the argument in this court. Although there may be some slight difference in the facts between this case and those which are stated in *Blake v. McClung, supra*, at page 246, we yet think that Carhart brings himself within the principle decided in that case, and that his citizenship in the State of New York should be regarded as sufficiently proved."

With the records of the corporate reorganization and existence of the Pioneer Iron Company undisputed before the court, what further burden rests upon the stockholders of that company, and how can the defendants be heard now collaterally to deny the existence of this corporation or to assert that it should not be heard before its property was taken?

It appears, therefore, that by the terms of the lease, which was the subject-matter of the attack below, the rights there conveyed passed to the corporate successor of the Pioneer Iron Company by the very words of the instrument; and that under the law of Michigan the Pioneer Iron Company was extended with express power to hold and continue to own its property. The existence of this company can not be ignored, and before its rights were passed upon it should have been afforded an opportunity to be heard.

The above considerations fully answer the suggestion that complainants below might assume or, in absence of the Pioneer Iron Company, prove that it "*was a dead corporation*," or that it was "*used as a dummy*," or that its "*stock was owned by other persons and corporations for their benefit*," or any other fact which might affect the property rights of the Pioneer Iron company and its stockholders, in this lease.

We claim that upon any and all of such issues the grantee of this 99 year lease had the right to be heard before its property was taken; and that it, in common with all citizens, should have been accorded the ordinary protection placed around their property.

Respectfully submitted,

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